

**Deposition Designations for:
WILLIAM J. HAGERTY
January 12, 2000**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence**

AO = Attorney Objection

BE = Best Evidence

Cum. = Cumulative

Ctr = Counter Designation

Ctr-Ctr = Counter-Counter

ET = Expert Testimony

F = Foundation

408 = Violation of FRE 408

H = Hearsay

IH - Incomplete Hypothetical

L = Leading

LA = Legal Argument

LC = Legal Conclusion

LPK - Lacks Personal Knowledge

LO = Seeking Legal Opinion

NT = Not Testimony

Obj: = Objection

R = Relevance

S = Speculative

UP = Unfairly Prejudicial under Rule 403

V = Vague

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 MISSOULA DIVISION

4 WILLIAM J. HAGERTY and JEANNETTE }
 HAGERTY, husband and wife, } Cause No.
5 } CV-99-116-M-DWM
 Plaintiffs, }
6 }
 vs }
7 }
 W.R. GRACE & CO.-Conn, a }
8 Connecticut corporation, W.R. }
 GRACE & CO., a Delaware }
9 corporation, W.R. GRACE, a/k/a }
 GRACE, an association of }
10 business entities, MONTANA }
 VERMICULITE COMPANY, a Montana }
11 corporation (dissolved), BENITA }
 LOVICK, Personal Representative }
12 for the ESTATE OF EARL D. LOVICK }
 DECEASED, and DOES I-IV, }
13 }
 Defendants. }
14 }

15
16 VIDEO DEPOSITION
17 OF
18 WILLIAM J. HAGERTY
19 (On Behalf of the Plaintiffs)

20
21 Taken at the Offices of
 Hedman, Asa & Gilman Reporting
22 947 South Main
 Kalispell, Montana
23 Wednesday, January 12, 2000
 10:19 a.m.

24
25 Reported by Debra M. Hedman, RPR, RMR, and Notary
 Public for the State of Montana, Flathead County.

1 Q What do you mean it was wet?

2 A Well, in any case, like when they would
3 blast and there was any sign of dust, they would
4 immediately turn the water on and sprinkle
5 everything down.

6 Q How long did you stay in Butte?

7 A Until 1946.

8 Q And then what happened in 1946?

9 A We moved up to -- Well, I was suppose to
10 come up to Hungry Horse Dam and start that job in
11 1946, and the union wouldn't accept my transfer, so
12 we decided to go up to Libby.

13 Q Why did you chose to go to Libby?

14 A Jeannette's folks were living there at the
15 time, and I knew that Zonolite was expanding rapidly
16 there so I got a job with Zonolite.

Libby

17 Q Do you remember how long you worked for
18 Zonolite?

19 A Two years on the regular job.

20 Q Do you remember the dates of that
21 approximately?

22 A The dates?

23 Q Do you remember the dates that you worked
24 at Zonolite, that two years?

25 A 1946 and '47, and I -- And probably the

Libby [

1 winter of '48 and '49 at different jobs.

2 Q After you left Zonolite, what did you do?

3 A I went to work for J. Neils Lumber
4 Company.

5 Q What kind of work did you do for J. Neils?

6 A Operating cranes and power shovels.

7 Q Did you ever own your own company?

8 A Yes, that was just briefly in between
9 Zonolite and when I went to work for J. Neils.

10 Q What kind of company was that?

11 A It was an excavating company. We had a
12 crane and a shovel and a couple of dump trucks.

13 Q How big was your company?

14 A Just my partner and I operated it
15 ourselves.

16 Q How long did you stay and work at
17 J. Neils?

18 A Twenty-four years.

19 Q Did you eventually get promoted?

20 A Yes.

21 Q What was your promotion to?

22 A After about four years operating cranes
23 and shovels and so forth, I was in charge of the --
24 they were expanding rapidly and they had lots of
25 cranes working and I was in charge of those and,

1 A Well, that was probably 1980.

2 Q Why did you eventually retire?

3 A I don't know. I just --- just got tired of
4 it, I guess. I just had enough.

5 Q Okay. And have you lived in Libby from
6 the time that you moved there in 1946 --

7 A Yes.

8 Q -- through your retirement now?

9 A Yes.

Libby

10 Q I want to talk now specifically about the
11 time that you worked at Zonolite. Why did you go to
12 work at Zonolite?

13 A Well, we went up to visit the wife's
14 family and I understood that Zonolite was expanding
15 and needed some help, so I got a job on running one
16 of the power shovels.

17 Q Was your wife's family associated with
18 Zonolite?

19 A Were they?

20 Q Yes.

21 A No.

22 Q Do you remember who hired you?

23 A Carlton Jouquin.

24 Q Did you have to interview or apply to work
25 there?

1 A Did I what?

2 Q Did you have to interview or apply to work
3 there?

4 A Yes, I interviewed with John Baggs, the
5 line foreman.

6 Q And was he your supervisor?

7 A Yes.

Libby [8 Q You mentioned that you were a shovel
9 operator. Can you tell us what that job consisted
10 of.

11 A It was mostly loading ore into dump trucks
12 that would haul that ore to the mill or to the waste
13 dump, whichever.

14 Q And were you in the pit?

15 A Yes.

16 Q I'm going to show you this exhibit. It's
17 marked 2-8. And again, if I can have you hold that
18 up for the camera real briefly.

19 A (Deponent complied.)

20 Q Is that the shovel?

21 A That's the first shovel I operated there
22 for Zonolite.

23 Q I'm going to show you the second one,
24 which is marked 2-7. And did you also operate that
25 shovel? Can you show it to the camera, too, as

1 you're looking at it?

2 A Yes. That's the second one that I
3 operated.

4 Q Okay. Thank you. Now, I see on
5 Exhibit 2-8 there that the shovel is dumping into
6 the truck.

7 A Yes.

8 Q Is that the work that you did?

9 A Yes, that's the ore.

Libby

10 Q Was it dusty -- You can put the photo
11 down. Was it dusty when you loaded the trucks?

12 A Oh, in the summertime it was. Yes.

13 Q Why was that?

14 A And weather like that it was dusty. The
15 trucks operating in the pit, running around the pit,
16 would kick up a lot of dust in the dry weather.

17 Q When you were operating the shovel and
18 loading the trucks, did you know what you were
19 loading?

20 A Well, yes. Zonolite -- or, vermiculite
21 ore is all I really knew.

22 Q Did you tell the driver what you were
23 loading his truck with?

24 A Yes, between the waste and the ore, we
25 would have to tell the driver.

Libby

1 Q Did what you tell the driver determine
2 where the driver went with his load?

3 A Yes.

4 Q Did you know what you were loading by the
5 actual names of the minerals?

6 A I knew the difference between vermiculite
7 and biotite. Other than that, I didn't know
8 anything about the ore.

9 Q Do you remember knowing about asbestos?

10 A Oh, yes. We didn't know anything about
11 it. Just our curiosity, when you would see a piece
12 of it.

13 Q Could you tell the biotite from the
14 vermiculite from the asbestos when you looked at
15 it --

16 A Oh, yes.

17 Q -- in the pit?

18 A Different color, yes.

19 Q And how did you know that?

20 A The vermiculite was an entirely different
21 color, gray mostly and brown; and the biotite was
22 jet black and hard; and the asbestos was white.

23 Q And how did you know what those minerals
24 were? Had you been instructed on what the minerals
25 looked like?

Libby

1 A The supervisor told me, so I would know if
2 they had an order for straight vermiculite, we would
3 move to that part of the pit. If they wanted
4 biotite, that was in another part of the pit.

5 Q Was that John Baggs?

6 A Yes.

7 Q And I assume that was at the time you
8 started working?

9 A Yes.

10 Q Did you receive any other training when
11 you started at Zonolite? Any safety training or
12 anything like that?

13 A No.

14 Q As the shovel operator, were you the
15 person who was responsible for deciding what was ore
16 and what was waste?

17 A Yes.

18 Q So nobody else told the truck drivers
19 whether they should go to the dump or --

20 A No, it was the shovel operator's
21 responsibility.

22 Q In making your decisions about whether
23 something was waste or ore, you followed the
24 instructions that John Baggs had given you?

25 A Yes.

Libby

1 Q Did the minerals appear -- Did they show
2 up in the side of the face differently?

3 A Yes..

4 Q What do you remember about that?

5 A The vermiculite was shiny and very -- very
6 slippery. The vermiculite ore was. And the waste
7 ore was more like dirt. It had vermiculite in it,
8 but --

9 Q Do you remember how big some of the
10 different deposits were? Was one mineral more
11 common --

12 A Oh, yes, the vermiculite was more common
13 than anything else.

14 Q What do you remember about the asbestos
15 when you were loading the ore?

16 A Well, all I remember about it was my
17 curiosity, when I first saw it there and wondered
18 what the white stuff was. And they never gave us
19 any instructions about what to do with it, so it
20 just went in with the waste mostly. And I remember
21 asking what it was, and they said it was just
22 asbestos waste.

23 Q Did the asbestos appear more commonly in
24 the vermiculite or on its own or do you remember
25 anything about that?

Libby

1 A No, I don't remember how it was
2 distributed through the stuff, but it was --

3 Q So you weren't instructed to do anything
4 different when you came across an asbestos deposit?

5 A No, just throw it in the waste or whatever
6 was handy.

7 Q Okay. Did you know anything more about
8 the minerals other than their names and what they
9 looked like?

10 A No.

11 Q Did you know that asbestos was a hazardous
12 mineral?

13 A No.

14 Q Now, after you were a shovel operator for
15 those two years that you mentioned before, did you
16 do any other kind of work at Zonolite?

17 A I worked in the mill in the wintertime.

18 Q And how did that happen?

19 A After I quit running shovel and went
20 into partnership for -- on our own, with Floyd
21 Blackwell -- Connie Blackwell, my partner, we had a
22 chance to go up there and work inside in the
23 wintertime in the mill for a couple months there in
24 the cold weather. So that's how we got in there.

25 Q Did either you or your partner know

1 somebody at Zonolite that helped that happened?

2 A Yes, Carlton Jouquin. He got us a job in
3 there for the winter months.

Libby

4 Q So it was temporary work?

5 A Yes.

6 Q And this was right after you stopped
7 working at Zonolite as a shovel operator?

8 A Yes.

9 Q Did you work full 40-hour work weeks when
10 you did --

11 A In the mill, yes.

12 Q All total, can you guess how many weeks or
13 months you would have done that kind of work?

14 A Probably six or seven weeks for two
15 winters.

16 Q Can you describe more specifically the
17 work that you did in the mill?

18 A The ore was coming in on a conveyor belt.
19 and it was our responsibility to keep that -- it
20 would fall off of the conveyor belt onto the floor,
21 and we would pick up those pieces of ore and put
22 them back on the conveyor belt. And the dust was
23 coming in from the other parts of the mill and it
24 was our responsibility to keep that swept up and we
25 just put it back on the belt.

Libby

1 A Yes.

2 Q Do you remember whether that kind of work
3 was dusty?

4 A Oh, yes.

5 Q What do you remember about the dust?

6 A Everything we touched had coating -- a
7 thick coating of dust. And, like, I remember
8 distinctly the stairways and the ladders, you had to
9 brush the dust off to go from one floor to another,
10 for any reason, which we very seldom did, but -- And
11 then the floor where we worked there, there was dust
12 coming in from the other parts of the mill and we
13 had to sweep that up.

14 Q Could you see dust in the air?

15 A Oh, yes.

16 Q How thick was the dust on the floor?

17 A Oh, up to an inch.

18 Q And was there a new layer of dust every
19 day?

20 A Yes.

21 Q Do you remember seeing dust come out of
22 the mill? And if you want --

23 A Yes.

24 Q -- you can use that exhibit.

25 A Yes. I remember seeing that on the other

Libby

1 side of the mill as well, but -- this side and that
2 side coming out. I didn't realize what it was, but
3 you could see those coming out those blowers.

4 Q Thank you. Did you ever work with any of
5 the other workers in the mill?

6 A No.

7 Q Did you work with your partner?

8 A Just my partner.

9 Q Did you ever talk with anyone about the
10 dust?

11 A No.

12 Q When you were hired at Zonolite, did the
13 company warn you that exposure to the dust could be
14 harmful to you?

15 A No.

16 Q When you were hired at Zonolite, did the
17 company warn you that exposure to asbestos could be
18 harmful to you?

19 A No.

20 Q When you were hired at Zonolite, did any
21 of the other workers warn you about the dust or the
22 asbestos?

23 A No.

24 Q Did you ever see any signs about the
25 hazards of asbestos or the dust?

Libby

1 A No.

2 Q Did your supervisors ever warn you the
3 dust could harm you?

4 A No.

5 Q Do you remember other workers talking
6 about the dust when you worked there?

7 A Yes, but just that it was annoying mostly.

8 Q Did you or any of the other workers ever
9 complain about the dust?

10 A No.

11 Q When you worked in the mill, on a
12 temporary basis, were you ever warned about the dust
13 or asbestos?

14 A No.

15 Q At the time that you worked at Zonolite,
16 did you know that asbestos was hazardous?

17 A No.

18 Q Were you aware when you worked at Zonolite
19 that other workers were developing illnesses from
20 the dust?

21 A No.

22 MR. BERKOFF: I'll object.

23 BY MR. LACEY:

24 Q Did you belong to the union when you
25 worked at Zonolite?

1 A Yes.

2 Q How can you tell?

3 A The things that I am unable to do anymore.

4 I just couldn't -- I couldn't do the things I had

5 been doing up until that time.

Libby

6 Q Did you eventually go see a lung
7 specialist?

8 A Yes.

9 Q Who did you go see?

10 A Dr. Whitehouse.

11 Q What's your understanding about
12 Dr. Whitehouse's specialty?

13 A I understand he is an expert in his field
14 of -- What do you call it? -- pull -- pulmonary,
15 something or rather there.

16 Q That's good enough. Do you remember when
17 you first went to go see Dr. Whitehouse?

18 A Probably a year and a half ago.

19 Q Do you recall the tests that
20 Dr. Whitehouse did on you?

21 A He put me -- They put me in one of those
22 breather machines, those plastic -- they have a name
23 for it -- a bubble or something. Put me in there
24 and took breathing tests for about an hour.

25 Q Did you have an x-ray?

Libby

1 A And then I had an x-ray.

2 Q Did you discuss the results of those tests
3 with Dr. Whitehouse?

4 A Yes.

5 Q After having that discussion with him,
6 what was your understanding about what was causing
7 your breathing problems?

8 A He took me in the room there and showed me
9 the x-ray and he pointed out that it was asbestos in
10 my lungs.

11 Q And you saw that on your x-ray?

12 A Yes.

13 Q Before Dr. Whitehouse, had any of your
14 other doctors ever told you that you had an asbestos
15 problem?

16 A No.

17 Q Do you have an understanding about what
18 condition the asbestos has created in your lungs?

19 A Yes.

20 Q What do you understand about that?

21 A Just the fact that those deposits in there
22 keep me from breathing freely, and from talking to
23 the doctors -- the two doctors, that's what I
24 gathered was my problem.

25 Q Aside from the time that you worked at

Arrowood
Obj:
H;F

Arrowood
Obj:
F

Libby

1 Zonolite, did you ever work with asbestos at any
2 other time in your life?

3 A No.

4 Q Did Dr. Whitehouse give you medication for
5 your asbestos problem?

6 A No.

7 Q Did he give you any inhalers or --

8 A He recommended going ahead with an inhaler
9 and using one of the compressed air ones, the larger
10 machine.

11 Q Would that have been a nebulizer?

12 A Yes.

13 Q And did those things help you?

14 A Yes.

15 Q Have you noticed that your breathing has
16 continued to get worse since you first met with
17 Dr. Whitehouse?

18 A Yes. In fact I had to go back to him.

19 Q When was the last time that you saw him?

20 A It would have been about November 1st.

21 Q Did you have more tests done on your lungs
22 then?

23 A Yes.

24 Q Do you recall whether those tests showed
25 that your asbestos problem was getting worse?

ARROWOOD
OBJ.
F

Libby

ARROWOOD
OBJ. 12

1 A Yes, he said it definitely was worse.

2 Q Do you recall having a pulmonary function
3 test done?

4 A Yes.

5 Q And what do you remember about that?

6 A The girls that gave me the test in the
7 breather machine there said that my -- from their
8 last report, it -- I had lost a considerable amount
9 of my breathing capacity, the test showed. And then
10 Dr. Whitehouse took another x-ray, of course.

11 Q Did you have any special procedures done
12 when you saw Dr. Whitehouse this most recent time?

13 A What was the last?

14 Q Did you have any special procedures done
15 when you went to see Dr. Whitehouse in November?

16 A No, just the breathing test and the x-rays
17 and he found something on -- Do you want me to go on
18 with that?

19 Q Yes, please.

20 A He took me in again and pointed out on the
21 x-ray that there was something on the lungs there.
22 And he said it could be a tumor, but we're going to
23 have to check into it further.

24 Q And did you undergo more tests to decide
25 whether it was a tumor?

Libby

1 A Yes, he sent me over to Deaconess Hospital
2 and they put me in the CAT scan there and took some
3 lab tests and gave me an intravenous while they were
4 doing so.

5 Q Was it a tumor?

6 A It wasn't a tumor, it was fluid. Turned
7 out to be.

8 Q And what did they do about the fluid?

9 A They had to go in my back and remove that
10 fluid.

11 Q Did you understand that that was a serious
12 problem?

13 A Yes.

14 Q How could you tell?

15 A Well, all the doctors I talked to --
16 Dr. Whitehouse later, a little bit, and the doctor
17 that took that fluid off, said it was a very
18 important thing to keep a close check on. He said,
19 You're going to have to have this done periodically
20 maybe from now on. So if you run short of breath,
21 considerably worse than it is now, well, get in
22 touch with us and we will have to do this over
23 again, probably.

24 Q Do you know whether that fluid on your
25 lungs was as a result of the asbestos in your lungs?

ARROWOOD
OBJ:
H

ARROWOOD
OBJ: H; F

Libby

1 A No, I couldn't say that. Just -- In
2 talking to Dr. Whitehouse later, that's what he
3 said, that it was probably from that.

4 Q Have you discussed with Dr. Whitehouse the
5 future course that your asbestos disease is going to
6 take?

7 A He just told me that it was probably going
8 to get worse and that I would have to take close
9 check on it and when my breathing got to the point
10 where it was necessary, I would come in again.

11 Q Have you talked with Dr. Whitehouse or any
12 other doctor about the potential need to go on
13 oxygen at some point?

14 A No.

15 Q Okay. Would you say that you have been
16 quite healthy for most of your life?

17 A Yes.

18 Q Have you ever been over weight?

19 A No.

20 Q Have you ever had any major surgeries?

21 A Just -- Yes, I had foot surgery from an
22 injury and I had gallbladder surgery.

23 Q When was that gallbladder surgery?

24 A 1965.

25 Q And other than your foot, you haven't had

ARROWOOD
OBJ.
H;F